



For a thriving New England

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January 27, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Donald G. Hoyt
d/b/a Don's Repair
Philbrook Avenue
Meredith, NH 03253

Donald G. Hoyt
d/b/a Hoyt's Scrap Metal & Firewood
10 Jenness Hill Road
Meredith, NH 03253

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation ("CLF")¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 (the "Notice") to the addressed persons of CLF's intention to file suit in United States District Court of the District of New Hampshire seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is two-fold. First, Donald G. Hoyt, doing business as Don's Repair (hereinafter "Don's Repair") and Hoyt's Scrap Metal & Firewood (hereinafter "Hoyt's Scrap Metal") is discharging stormwater directly associated with the automobile salvage and combined timber products and scrap metal recycling facilities located at Philbrook Avenue, Meredith NH and 10 Jenness Hill Road, Meredith NH respectively (hereinafter the "Facilities"), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Donald G. Hoyt, doing business as Don's Repair and Hoyt's Scrap Metal, has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit²

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England's environment.

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP or "permit"], available at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf (last visited February 13, 2012).

(“MSGP”) adopted by EPA for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

BACKGROUND

Hawkins Brook (Segments NHRIV700020109-01 and NHRIV700020109-02) is within the Merrimack Watershed and flows easterly of and in close proximity to both Hoyt’s Scrap Metal and Don’s Repair. In addition, tributaries of and wetlands associated with Hawkins Brook are located on and in the Facilities. Segment NHRIV700020109-01 of Hawkins Brook flows to the Prescott Park Dam and becomes segment NHRIV700020109-02 which flows to confluence with the Meredith Bay, a tributary of Lake Winnepesaukee. The Environmental Protection Agency has designated Hawkins Brook as a habitat for “fish, shellfish, wildlife protection and propagation, public water supply, aquatic life harvesting and for primary and secondary contact recreation.” Both segments of Hawkins Brook do not meet these standards and the Environmental Protection Agency (“EPA”) has designated Hawkins Brook as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for pollutants.³ Both segments NHRIV700020109-01 and NHRIV700020109-02 of Hawkins Brook are impaired due to organic enrichment/oxygen depletion, mercury and ph/acidity/caustic conditions.^{4 5}

Lake Winnepesaukee (Waterbody ID NHLAK700020110-02-19, is within the Merrimack Watershed. The Environmental Protection Agency has designated Lake Winnepesaukee as a habitat for “fish, shellfish, wildlife protection and propagation, public water supply, aquatic life harvesting and for primary and secondary contact recreation.” Lake Winnepesaukee does not meet these standards and the Environmental Protection Agency (“EPA”) has designated Lake Winnepesaukee as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for pollutants.⁶ Lake Winnepesaukee is impaired due to nuisance exotic species, mercury and ph/acidity/caustic conditions.⁷

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁸ Industrial activities, such as material handling and storage, processing, reclaiming, and wholesale distribution of junked automobiles, scrap metal, timber

³ See 33 U.S.C. § 1313(d).

⁴ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=NHRIV700020109-01&p_cycle=2010&p_state=NH&p_report_type=

⁵ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=NHRIV700020109-02&p_cycle=2010&p_state=NH&p_report_type=

⁶ See 33 U.S.C. § 1313(d).

⁷ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=NHLAK700020110-02-19&p_cycle=2010&p_state=NH&p_report_type=

⁸ See 40 C.F.R. § 122.26(b)(13).

products, and waste materials, vehicular traffic, and other operations that occur at industrial facilities, may be exposed to stormwater.⁹ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁰

Hoyt's Scrap Metal and Don's Repair are required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2007, Hoyt's Scrap Metal and Don's Repair has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent ("NOI") within 90 days after the initial issuance of the MSGP.¹¹ On September 29, 2008, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2008 permit by January 5, 2009.¹²

Hoyt's Scrap Metal and Don's Repair have failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, Hoyt's Scrap Metal and Don's Repair are operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Donald G. Hoyt, d/b/a Hoyt's Scrap Metal & Firewood and Don's Repair, is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Hoyt's Scrap Metal and Don's Repair have been in operation since at least 2007. Donald G. Hoyt, d/b/a Hoyt's Scrap Metal and Don's Repair, and his agents, have operational control over the day-to-day industrial activities at the Facilities. Therefore, they are responsible for managing stormwater at the Facilities in compliance with the CWA.

LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at the automobile salvage yard and combined scrap metal recycling and timber products Facilities located respectively at Philbrook Avenue, Meredith, NH and 10 Jenness Hill Road, Meredith, NH. To the extent that the two piles of timber products resembling or consisting of sawdust or bark

⁹ See 40 C.F.R. § 122.26(b)(14).

¹⁰ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹¹ EPA's Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, and again in 2008. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); and 73 Fed. Reg. 56,572 (Sept. 29, 2008). See MSGP part 1.1 and 1.3.1.

¹² See MSGP Table 1-2.

mulch located approximately 160 feet north-northwesterly and approximately 75 feet easterly of the Jenness Hill Road Meredith Substation are part of the Facilities' operations, unpermitted discharges of pollutants from these piles are also included in the notice.

ACTIVITIES ALLEGED TO BE VIOLATIONS AT HOYT'S SCRAP METAL

Hoyt's Scrap Metal has, and continues to, engage in "industrial activities," and its operations fall under SIC Code 5093 and 2499, within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).¹³ Because the Facility has primary SIC Codes of 5093 and 2499 and stormwater discharges associated with industrial activity, Hoyt's Scrap Metal is required to apply for, obtain coverage, and comply with the requirements of a National Pollutant Discharge Elimination System ("NPDES") permit such as the MSGP. Hoyt's Scrap Metal has failed to take any of these required steps.

The scrap metal operation of Hoyt's Scrap Metal includes, but is not limited to: the purchase, collection, processing and storage of scrap metal outdoors and the operation and storage of industrial equipment. Upon information and belief, the Facility's scrap piles contain, but are not limited to: industrial aluminum waste, refrigerators, vehicle gas tanks, barrels, aluminum ladders, automotive oil pans and engines, grocery carts, tire rims, pallets, and other materials that are contaminated with industrial pollutants. Vehicles drive on and off the Facility to deliver scrap metal.

Scrap materials, refuse piles, and polluted parking and material handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the scrap material, refuse piles, and polluted parking and material handling areas, picking up oil, grease, metals, solvents, nutrients, pathogens, dissolved solids, trash, and other pollutants associated with the Facility's operations. The polluted runoff then flows by the operation of gravity via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States.¹⁴

The timber products operation of Hoyt's Scrap Metal engages in activities that include, but are not limited to: producing, processing, storing, buying, and selling timber products; and the operation and storage of industrial equipment. The Facility's piles contain, but are not limited to: large amounts of logs, wood, mulch, and sawdust.

¹³ See MSGP, Appendix D: Activities Covered, at D-4. Scrap recycling and waste recycling facilities identified by the SIC Code 5093 are subject to the requirements of the MSGP for stormwater discharges.

¹⁴ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.



Piles of logs, wood, mulch, and sawdust, interior access roads, vehicles and heavy equipment, and material processing and handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the industrial materials and areas, picking up bark and wood debris, total suspended solids (TSS), leachates (which can contain high levels of TSS and biochemical oxygen demand (BOD)), oil, grease, metals, solvents, acids, nutrients, pathogens, dissolved solids, trash, fuel and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed by the operation of gravity via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States.¹⁵

ACTIVITIES ALLEGED TO BE VIOLATIONS AT DON'S REPAIR

Don's Repair has, and continues to, engage in "industrial activities," and its operations fall under SIC Codes 5015, within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).¹⁶ Because the Facility has a primary SIC Code of 5015 and stormwater discharges associated with industrial activity, Don's Repair is required to apply for, obtain coverage, and comply with the requirements of a National Pollutant Discharge Elimination System ("NPDES") permit such as the MSGP. Don's Repair has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: vehicle dismantling and processing; used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; and liquid storage. These activities are associated with a wide variety of pollutants, including but not limited to oil and grease; ethylene glycol; heavy metals; mercury; sulfuric acid; iron; galvanized metals; aluminum; petroleum hydrocarbons; suspended solids; arsenic; organics; chlorinated solvents; acid/alkaline wastes; phosphorous; salts; and fuel.

Automobile salvage activities at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over salvage yard and storage areas, picking up pollutants associated with the Facility's operations. The polluted runoff is then conveyed by the operation of gravity via site grading, sloped surfaces, ditches, subsurface hydrological connections, and

¹⁵ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

¹⁶ See MSGP, Appendix D: Activities Covered, at D-4. Automobile salvage yard facilities identified by the SIC Code 5015 and scrap metal recycling facilities identified by SIC Code 5093 are subject to the requirements of the MSGP for stormwater discharges.

other collections and conveyances into waters of the United States.¹⁷ In addition, there is a wetland associated with Hawkins Brook located on and in the Facility, as evidenced by the presence of hydrophytic vegetation.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁸ Don's Repair and Hoyt's Scrap Metal discharge stormwater associated with their industrial activities, as defined by 40 C.F.R. § 122.26(b)(14), via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States. Because Don's Repair and Hoyt's Scrap Metal have not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, they are illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁹ By failing to apply for and comply with the specific requirements of the MSGP, Don's Repair and Hoyt's Scrap Metal are in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. Don's Repair and Hoyt's Scrap Metal are discharging stormwater to waters of the United States without a permit.

Don's Repair and Hoyt's Scrap Metal are industrial dischargers with primary SIC Codes of 5015 and 5093/2499 respectively, which means that pursuant to Section 402(p) of the Clean Water Act, Don's Repair and Hoyt's Scrap Metal are obligated to apply for coverage under the MSGP or obtain other legal authorization. Because both Don's Repair and Hoyt's Scrap Metal have operated and continue to operate without permits under Section 402(p), Don's Repair and Hoyt's Scrap Metal are in violation of Section 301(a) of the Act.

In addition, during storm events, the Facilities' industrial activities have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2007. The Facilities are generating and conveying pollutants from at least the following point sources:" piles of industrial materials (including timber products); areas

¹⁷ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

¹⁸ 33 U.S.C. § 1311(a).

¹⁹ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source").

of industrial activity; vehicles, vehicle hulks, and equipment left outdoors; the vehicles driving on and off the Facilities; sloped surfaces, channels, ditches, discrete fissures, subsurface hydrological connections, containers, and other conveyances to Hawkins Brook and its tributaries and associated wetlands.²⁰ Hawkins Brook, its tributaries, and its associated wetlands, as well as downstream receiving waters including Meredith Bay and Lake Winnepesaukee are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore, “navigable waters,” as defined in 33 U.S.C. § 1362(7). The Facilities are discharging industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Don’s Repair and Hoyt’s Scrap Metal are violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Don’s Repair and Hoyt’s Scrap Metal are violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²¹ Don’s Repair has a primary SIC Code of 5015, Hoyt’s Scrap Metal has primary SIC Codes of 5093 and 2499, and both Facilities must obtain coverage under the MSGP for their stormwater discharges. The failure of Don’s Repair and Hoyt’s Scrap Metal to obtain coverage and comply with the permit is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.²²

1) Don’s Repair and Hoyt’s Scrap Metal Must Develop and Implement Stormwater Pollution Prevention Plans (SWPPPs).

As a prerequisite to obtaining coverage under the MSGP, Don’s Repair and Hoyt’s Scrap Metal must both prepare Stormwater Pollution Prevention Plans (“SWPPP”).²³ Each SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁴ Don’s Repair and Hoyt’s Scrap Metal have failed to develop SWPPPs in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

²⁰ These discharges constitute “point sources” as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

²¹ MSGP part 1.1 and 1.2.

²² A thorough search of EPA’s Electronic Stormwater Notice of Intent database reveals that Don’s Repair and Hoyt’s Scrap Metal and Firewood have not filed an NOI for their Facilities. EPA’s Electronic Stormwater Notice of Intent database, <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm> (last visited January 27, 2014).

²³ See MSGP part 5.

²⁴ See MSGP part 5.1.

2) Don's Repair and Hoyt's Scrap Metal Must Submit to EPA Complete Notices of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Don's Repair and Hoyt's Scrap Metal must submit each complete a Notice of Intent ("NOI") to the EPA.²⁵ To complete the NOIs, Don's Repair and Hoyt's Scrap Metal are required to determine whether the body of water the stormwater is discharged to is an "impaired" water body, and whether the Facilities discharge any of the pollutants for which the waterbody is impaired to that water body.²⁶ Hawkins Brook is classified as "impaired" water.²⁷ Because Don's Repair and Hoyt's Scrap Metal are "New Dischargers" under the MSGP,²⁸ they must also provide data and other technical information to EPA to discharge to impaired waters,²⁹ as well as implement and maintain any control measures or conditions to meet applicable water quality standards.³⁰ Additionally, as part of preparing the NOIs, the Facilities must make certain verifications such as verifying that no harm is done to a species in violation of the Endangered Species Act.³¹ Don's Repair and Hoyt's Scrap Metal have failed to prepare and file NOIs meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Don's Repair and Hoyt's Scrap Metal Must Implement Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Don's Repair and Hoyt's Scrap Metal must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Don's Repair and Hoyt's Scrap Metal must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³² These control practices must be in accordance with good engineering practices and manufacturer's specifications.³³ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify

²⁵ See MSGP part 1.3.1.

²⁶ See MSGP part 2.2.2.

²⁷ See *supra* pp. 2–3.

²⁸ See MSGP, Appendix A: Definitions, Abbreviations, and Acronyms, at A-4 (defining the term "new discharger" as "a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site"); see also 40 C.F.R. § 122.2.

²⁹ See MSGP part 1.1.4.7.

³⁰ See MSGP part 2.2.2.3.

³¹ See MSGP part 1.1.4.5 and 2.3.

³² See MSGP part 2.1.

³³ *Id.*

these control measures as expeditiously as practicable.³⁴ Don's Repair and Hoyt's Scrap Metal have failed to cover the materials and operations that may result in polluted stormwater runoff. Don's Repair and Hoyt's Scrap Metal have not implemented the required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) Don's Repair and Hoyt's Scrap Metal Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Don's Repair and Hoyt's Scrap Metal must conduct routine inspections of all areas of the Facilities where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁵ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁶ These inspections must occur when the Facilities are in operation.³⁷ The schedule of these inspections must be included in each Facility's SWPPP and be performed by qualified personnel.³⁸ Don's Repair and Hoyt's Scrap Metal have failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) Don's Repair and Hoyt's Scrap Metal Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Don's Repair and Hoyt's Scrap Metal must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁹ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.⁴⁰ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴¹ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴² All monitoring data collected under the Permit must be reported to EPA. Furthermore, because Hawkins Brook is an "impaired water" under 33 U.S.C. § 1313(d), Don's Repair and Hoyt's Scrap Metal must

³⁴ *Id.*

³⁵ *See* MSGP part 4.1.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See* MSGP part 6.

⁴⁰ *See* MSGP part 6.2.

⁴¹ *See* MSGP part 6.1.1.

⁴² *See* MSGP part 6.1.3.

monitor for all pollutants for which the Hawkins Brook is impaired.⁴³ Don's Repair and Hoyt's Scrap Metal have failed to conduct the required monitoring under the MSGP and have failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) Don's Repair and Hoyt's Scrap Metal Must Carry out the Required Reporting and Recordkeeping.

Don's Repair and Hoyt's Scrap Metal must maintain and submit any and all required monitoring data.⁴⁴ Such monitoring data includes the following: an annual report to EPA which includes each Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;⁴⁵ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁴⁶ and any other required reports under the MSGP.⁴⁷ Don's Repair and Hoyt's Scrap Metal have failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) Don's Repair Must Comply with the Requirements of MSGP Subpart M.

Don's Repair must also comply with the sector-specific requirements contained in Subpart M of the MSGP.⁴⁸ Subpart M requires automobile salvage yard facilities to implement additional technology-based effluent limits,⁴⁹ meet additional SWPPP and inspection requirements,⁵⁰ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to automobile salvage yard facilities.⁵¹ Don's Repair has failed to comply with the requirements of Subpart M of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

8) Hoyt's Scrap Metal Must Comply with the Requirement of MSGP Subparts A and N.

Hoyt's Scrap Metal must comply with the sector-specific requirements contained in Subpart A of the MSGP.⁵² Subpart A requires timber products facilities to implement additional technology-based effluent limits,⁵³ meet additional SWPPP and inspection requirements,⁵⁴ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to timber products facilities.⁵⁵ Hoyt's Scrap Metal must also prevent any discharge of any chemical

⁴³ See MSGP part 6.2.4.

⁴⁴ See MSGP part 7.1

⁴⁵ See MSGP part 7.2.

⁴⁶ See MSGP part 7.3.

⁴⁷ See MSGP part 7.4.

formulations or chemical additives sprayed on or applied to wood products⁵⁶ and abide by the effluent limitations for spray down/ intentional wetting of logs, if any.⁵⁷ Hoyt's Scrap Metal has failed to comply with the requirements of Subpart A of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

Hoyt's Scrap Metal must also comply with the sector-specific requirements contained in Subpart N of the MSGP.⁵⁸ Subpart N requires scrap recycling and waste recycling facilities to implement additional technology-based effluent limits,⁵⁹ meet additional SWPPP and inspection requirements,⁶⁰ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to metal recycling facilities.⁶¹ Hoyt's Scrap Metal must also minimize contact of stormwater runoff with stockpiled materials, processed materials and non-recyclable wastes through various control measures such as permanent or semi-permanent covers, oil and water separators, sumps and dry absorbents for areas where potential sources of residual fluids are stockpiled.⁶² Hoyt's Scrap Metal has failed to comply with the requirements of Subpart N of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Don's Repair and Hoyt's Scrap Metal operate the Facilities without permit coverage or discharge stormwater without a permit from the Facilities is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Don's Repair and Hoyt's Scrap Metal have discharged stormwater without a permit in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), on every day since at least 2007 on which there has been a measurable precipitation event.

⁴⁸ See MSGP, Appendix D, Table D-1, Sector M.

⁴⁹ See MSGP part 8.M.2.

⁵⁰ See MSGP part 8.M.3 and 8.M.4.

⁵¹ See MSGP 8.M.5.

⁵² See MSGP, Appendix D, Table D-1, Sector A.

⁵³ See MSGP part 8.A.3.

⁵⁴ See MSGP part 8.A.4 and 8.A.5.

⁵⁵ See MSGP part 8.A.6.

⁵⁶ See MSGP part 8.A.2.

⁵⁷ See MSGP part 8.A.7.

⁵⁸ See MSGP, Appendix D, Table D-1, Sector N.

⁵⁹ See MSGP part 8.N.3.

⁶⁰ See MSGP part 8.N.4 and 8.N.5.

⁶¹ See MSGP 8.N.6.

⁶² See MSGP part 8.N.3.1.2.

Every day, since at least 2007, on which Don's Repair and Hoyt's Scrap Metal have failed and continue to fail to apply for, obtain coverage under, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the Clean Water Act, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facilities and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Don's Repair and Hoyt's Scrap Metal are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Don's Repair and Hoyt's Scrap Metal to a penalty up to \$32,500 per day for each violation at each Facility which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation at each Facility that occurred after January 12, 2009.⁶³ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Don's Repair and Hoyt's Scrap Metal to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that

⁶³ 40 C.F.R. § 19.2



conservation law foundation

negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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